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OFFICE OF PETITIONS

In re Application of	:	
Victor V. Gogolak	:	
Application No.: 09/681586	:	DECISION ON
Filing or 371(c) Date: 05/02/2001	:	PETITION
Attorney Docket Number: QED0003	:	

This is a decision in response to the Petition to Withdraw the Holding of Abandonment, filed October 3, 2007. The petition is properly treated under 37 CFR § 1.181.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice to File Missing Parts of Nonprovisional Application ("Notice"), mailed May 29, 2001. The Notice set a non-extendable two (2) month period for reply. No reply having been received, the application became abandoned on July 30, 2001. A Notice of Abandonment was mailed November 7, 2003.

Petition under 37 CFR 1.181

Applicant files the present petition and asserts that a timely reply to the Notice was filed on June 15, 2001. In support of this assertion, Applicant provides a copy of a the response, which includes a Certificate of Mailing dated June 15, 2001, and executed by David LeCroy. Applicant also includes a copy of a return-receipt postcard acknowledging receipt by this Office of the reply on June 18, 2001.

Applicable Law, Rules and MPEP

37 CFR 1.181(f), states:

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

Analysis and conclusion

In this instance, the application became abandoned July 30, 2001. Applicant filed a reply on June 15, 2001. In either scenario, more than six years has passed without Applicant taking any action to discover the status of the application. The petition is dismissed as untimely.

It is also noted that Applicant "petitions for any required relief including extensions of time and authorizes the [Director] to charge the cost of such petitions and/or other fees due...." Petition at p.2. Applicant is advised that any petition to revive the application must include a showing to the satisfaction of the Director that the delay was unintentional.

Alternate venue

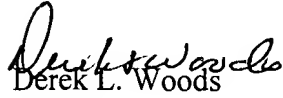
Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Director for Patents PO Box 1450 Alexandria, VA 22313-1450
By FAX:	(571) 273-8300 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

A handwritten signature in cursive script, appearing to read "Derek L. Woods".

Derek L. Woods
Attorney
Office of Petitions